

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

BRENDA DAVIES, Personal )  
Representative of the Estate of Duane )  
E. Davies, Deceased, )

Plaintiff, )

v. )

BNSF RAILWAY COMPANY, a )  
Delaware Corporation, and BOX )  
BUTTE COUNTY, NEBRASKA, )  
(for purposes of apportionment only), )

Defendants. )

4:08CV3203

**MEMORANDUM  
AND ORDER**

Defendant BNSF Railway Company has filed a motion to compel Plaintiff to produce her [Fed. R. Civ. P. 26\(a\)\(1\)](#) initial disclosures, answers to interrogatories, and responses to requests for production of documents. (Filing [21](#).) The motion states that counsel for the parties conferred by telephone on December 16, 2008, to determine the substance of the final progression order pursuant to this court's December 4, 2008, order (filing [10](#)), and that Plaintiff has not produced her initial disclosures as agreed in this telephone conference. The motion further states that BNSF served Plaintiff with written interrogatories and requests for production of documents on January 23, 2009, and Plaintiff has not yet responded despite numerous telephone calls and written correspondence with Plaintiff's counsel. Plaintiff's counsel has not responded to BNSF's motion to compel.

Because Plaintiff's counsel has failed to produce initial disclosures, answers to interrogatories, and responses to requests for production of documents; counsel for BNSF has conferred or attempted to confer with Plaintiff's counsel regarding this

failure pursuant to [Fed. R. Civ. P. 37\(a\)](#); and Plaintiff's counsel has not responded to BNSF's motion to compel in any fashion, I shall grant BNSF's motion. Accordingly, I shall order that on or before April 29, 2009, Plaintiff produce her (a) initial disclosures; (b) answers to BNSF's interrogatories to Plaintiff dated January 23, 2009 (filing [22](#), ex. A); and (c) responses to BNSF's requests for production of documents to Plaintiff dated January 23, 2009 (filing [22](#), ex. B).

IT IS ORDERED:

1. The motion to compel (filing [21](#)) filed by defendant BNSF Railway Company is granted; and

2. On or before April 29, 2009, Plaintiff shall produce her (a) [Fed. R. Civ. P. 26\(a\)\(1\)](#) initial disclosures; (b) answers to BNSF's interrogatories to Plaintiff dated January 23, 2009; and (c) responses to BNSF's requests for production of documents to Plaintiff dated January 23, 2009.

DATED this 14th day of April, 2009.

BY THE COURT:  
*s/ Richard G. Kopf*  
United States District Judge